IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8536 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 1 - Petitioner(s)

Versus

BHOJRAJ MAKKAD & 1 - Respondent(s)

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Appearance :
NOTICE NOT RECD BACK for Petitioner No(s).: 1.
MR MG NAGARKAR for Petitioner No(s).: 1.
NOTICE SERVED for Petitioner No(s).: 2.
MR RM VIN for Petitioner No(s).: 2.
MR NILESH A PANDYA for Respondent No(s).: 1,2.
MR RAMNANDAN SINGH for Respondent No(s).: 2.
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 23/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

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1.By way of this petition, the petitioners have prayed to issue writ or any other type of writ or order or direction quashing and setting aside the impugned Judgment and order dated 28.2.2003 passed by the learned Central Administrative Tribunal (for short "CAT") in Review Application No.10 of 2003 and to quash and set aside the impugned Judgment and order dated 28.3.2002 passed by the CAT in O.A. No.180 of 1996.

Initially, this petition was placed for admission before the Division Bench of this Court (B.J.Shethna & A.H.Mehta, JJ.). Speaking for the Bench, one of us (B.J.Shethna,J.) dismissed the same by order dated 24.6.2003. It is a brief order which we would like to reproduce hereunder :

> "Heard learned Counsel Shri Nagarkar for the petitioner. Apart from the fact that almost identical petition i.e. Special Civil Application No.8405 of 2003 was dismissed only yesterday, 23.6.2003, it clearly appears that after Review Application No.10 of 2003 filed in O.A. No.180 of 1996 was dismissed by the tribunal on 28.2.2003, the petition themselves files M.A.No.125 of 2003 before the tribunal in O.A. No.180 of 1996 and prayed for 8 months time to implement the order of the tribunal. It further clearly appears from the order dated 25.2.2003 passed by the tribunal on M.A.No.125 of 2003 that they had asked for extension for 8 months. The Tribunal granted time to implement the order till 30.6.2003 as the Tribunal was of the considered opinion that it had already granted 3 months time in

the O.A. itself and the said time also passed without any progress. Under the circumstances, there is no question of interfering with the order impugned in this petition.

In view of the above, this petition is summarily dismissed."

2.The aforesaid order passed by the Division Bench of this Court on 24.6.2003 was challenged by the petitioner by way of Special Leave Petition (Civil) No.17545 of 2003. While granting the SLP, Civil Appeal No.1183 of 2005, filed by the petitioner, was allowed by the Hon'ble Supreme Court and the Judgment and order dated 24.6.2003, passed by the Division Bench of this Court in this petition was set aside and the matter was remitted to this court to hear afresh and pass reasoned order. While disposing of the matter the Hon'ble Supreme Court also expressed hope that the High Court will take all necessary steps to dispose of the matter as expeditiously as possible. It is a brief order, therefore, we would like to reproduce the same which is as under :

"Special Leave Granted.

We have heard Counsel for the parties and peruse the Judgment of the High Court.

> There is no discussion in the Judgment of the High court on the merit of the case, and the High Court has dismissed the Special Civil Application without even adverting to the facts of the case.
>
> We are of the view that in the facts and circumstances of this case, summary dismissal was not warranted. We, therefore, allow this Appeal, set aside the Judgment and order dated 24.6.2003 and remit the matter to the High Court to hear the matter afresh and pass a reasoned order. We have no doubt that the High Court will take all necessary steps to dispose of the matter as expeditiously as possible.
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> The Appeal is allowed."

3.On remand the matter was placed before the Hon'ble Ist Court consisting of Hon'ble Chief Justice Mr.Justice Bhawani Singh and H.K.Rathod, J. and on 9.5.2005 Their Lordships admitted this petition by issuing Rule making it returnable on 29.6.2005. However, on 29.6.2005 following order was passed by Their Lordships :

> "Post this matter before the Division Bench comprising of Hon'ble Messrs. Justices B.J.Shethna and M.C.Patel, in the next week."

4.Accordingly, it was placed before this court on 6.7.2005 and on the request of learned Counsel for the parties it was adjourned to 21.7.2005 and on 21.7.2005

it was adjourned to 17.8.2005. However, for some or the other reason the matter was not placed on 17.8.2005, but it is placed for hearing today i.e. On 23.8.2005. Today, learned Counsel Shri R.M.Vin for the petitioner, appearing with learned Counsel Shri Ramanandan Singh, prayed for time once again, but we had to reject that request for adjournment in view of the order passed by the Hon'ble Supreme Court, as earlier on the request of learned Counsel for the parties we have adjourned the matter twice.

5. Learned Counsel Shri Pandya, appearing for the respondents vehemently submitted that when the petitioners moved this matter initially before the Division Bench on 24.6.2003, at that time it was never brought to the notice of this court that on earlier occasion the petitioners had filed Special Civil Application No.7119 of 2002, against the impugned Judgment and order dated 28.3.2002 passed in OA No.180/96, which was already rejected by another Division Bench of this Court (R.K.Abichandani & Kundan Singh, JJ). He, therefore, submitted that after first petition i.e. Special Civil Application No.7119 of 2002 was rejected as withdrawn by this court against the impugned Judgment and order dated 28.3.2002 passed by

the CAT in OA No.180 of 1996 it was not open to the petitioner to once again challenge the said order by way of this petition in guise of challenging the impugned Judgment and order dated 28.2.2003 passed by the CAT in Review Application No.10 of 2003 filed in OA No 180 of 1996. Shri Pandya has produced the copy of order dated 17.9.2002 passed by the Division Bench in Special Civil Application No.7119 of 2002. It is a brief order which we would like to produce hereunder :

> "After the arguments, the learned counsel for the petitioners states that the petitioners seeks permission to withdraw this petition with a view to approach the Tribunal in the matter by way of review application and for leading further evidence in the matter. The petition is rejected as withdrawn. Notice is discharged with no order as to costs. Ad.interim relief stands vacated."

6. In view of the above Shri Pandya submitted that this 2nd petition is not maintainable and on this ground alone this petition should be dismissed as, while dismissing the earlier petition no liberty was reserved to the petitioner either to file Review Application before the CAT or for leading further evidence in the matter or to file fresh petition against the impugned Judgment and order dated 28.3.2002 passed by the CAT in OA No 180 of

1996. It may be stated that earlier this petition was dismissed by the Division Bench of this Court (B.J.Shethna & Akshay H.Mehta,JJ.) without issuing Notice to the other side, but now it is brought to our notice by learned Counsel Shri Pandya for the respondents, who appeared in response to the notice of Rule served upon the respondents, that against the impugned Judgment and order dated 28.3.2002 passed by the Tribunal in OA No 180/96 the petitioner had earlier filed Special Civil Application No.7119 of 2002, which was rejected as withdrawn by another Division Bench (R.K.Abichandani & Kundan Singh, JJ.) without reserving any liberty to the petitioner to challenge the same by way of fresh petition.

7. However, Shri Vin for the petitioner vehemently submitted that the learned Counsel Shri Mitul Shelat who appeared for Shri Nagarkar for the petitioners sought permission from the Court to withdraw the said petition with a view to approach the tribunal by way of Review Application and for leading further evidence in the matter and by recording their statements the petition was dismissed as withdrawn. Therefore, it was always open to the petitioner to approach the Tribunal by way of Review Application and after rejection of

their Review Application they can approach this Court and challenge the order passed by the CAT in Review Application No.10 of 2003 in OA No 180/96.

8. We have already reproduced the order dated 17.9.2002 passed by this Court in Special Civil Application No.7119 of 2002. From the bare reading of said order it is clear that after fully arguing the matter the learned Counsel for the petitioner sought permission to withdraw his petition with a view to approach the learned Tribunal for review and for leading further evidence as the Division Bench of this court was not inclined to entertain the petition. However, it is pertinent to note from the order dated 17.9.2002 passed by another Division Bench of this court that though such a request was made it was not granted and the petition was simply dismissed as withdrawn without reserving any liberty to either file fresh petition before this court against the impugned judgment and order dated 28.3.2002 passed in OA No.180 of 1996 or to file Review Application or for leading further evidence in the matter before the Tribunal.

9. Law on this point is very clear. As held by the Hon'ble Supreme Court in the case of SARGUJA TRANSPORT SERVICE v/s. STATE TRANSPORT APPELLATE TRIBUNAL, reported in

AIR 1987 SC 88 that fresh petition under Art.226 in respect of same cause of action is not maintainable if earlier petition is withdrawn without permission to institute fresh petition. In the instant case, as stated earlier, impugned judgment and order dated 28.3.2002 passed by the CAT in OA No.180 of 1996 was already challenged before this court by way of Special Civil Application No.7119 of 2002 which was dismissed as withdrawn after lengthy arguments of the learned Counsel for the petitioner by the Division Bench of this Court without reserving any liberty to the petitioner to file fresh petition. In that view of the matter once the petitioner's previous petition is dismissed then, in our considered opinion, 2nd petition before this court would not lie against the impugned judgment and order dated 28.3.2002 passed in OA No.180/96 is not maintianable.

10. Once we come to the conclusion that this 2nd petition is not maintainable against the impugned order dated 28.3.2002 passed in OA No.180/96 in view of first petition i.e. Sp. Civil Application No.7119 of 2002 dismissed as withdrawn without reserving liberty to the petitioners to file fresh petition against this very order then there is no question of entertaining this

petition against the order dated 28.2.2003 passed in Review Application No.10/2003 in OA No.180/96.

11.In view of the above, we are not inclined to go into any other aspect of the case.

12.In view of the above discussion, this petition fails and is dismissed with no order as to costs.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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